

*REMARKS/ARGUMENTS**The Pending Claims*

Claims 1-43 and 54-80 are pending and are directed to various methods comprising the use of the active form of *S*-[2-([1-(2-ethylbutyl)cyclohexyl]carbonyl]amino)phenyl] 2-methylpropanethioate.

Amendments to the Claims

Claims 44-53 have been canceled. New claims 54-80 have been added and are supported by the specification at, for example, paragraphs [0003] and [0004] and the originally filed claims. No new matter has been added by way of these amendments.

Summary of the Office Action

The Office objects to claims 45 and 48-50 for allegedly being in improper dependent form.

Claims 44-53 stand rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly unpatentable over (a) claims 1 and 6 of Shinkai et al. I (U.S. Patent 6,426,365), (b) claims 1-7 of Shinkai et al. II (U.S. Patent 6,753,346), or provisionally (c) claims 19-22 of U.S. Patent Application 10/825,531.

Claims 1-53 remain provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly unpatentable over (a) claims 1-9 and 11-23 of co-pending U.S. Patent Application 10/802,220 ("the '220 application"), or (b) claims 1-5, 7-32, 34-52, and 54-83 of co-pending U.S. Patent Application 10/835,916 ("the '916 application").

Discussion of the Claim Objections

The Office objects to claims 45 and 48-50 for allegedly being in improper dependent form for failing to limit the subject matter of a previous claim. To advance prosecution and not in acquiescence of the rejection, claims 45 and 48-50 have been canceled. Accordingly, this rejection has been rendered moot.

Discussion of the Obviousness-type Double Patenting Rejections

The Office has rejected the claims for obviousness-type double patenting in view of several references. These rejections are traversed for the following reasons.

A. Claims 44-53

To advance prosecution and not in acquiescence of the rejections, claims 44-53 have been canceled. Accordingly, the obviousness-type double patenting rejections of claims 44-53 have been rendered moot.

B. Claims 1-53

The obviousness-type double patenting rejection with respect to the '916 application is provisional because the '916 application has not yet issued as a patent. As stated in M.P.E.P. § 1504.06, "[i]f a provisional double patenting rejection (of any type) is the only rejection remaining in two conflicting applications, the examiner should withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent." The present application has a filing date of March 17, 2004, whereas the '916 application has a filing date of April 30, 2004. Thus, the present application should be passed to issuance without the need to address the obviousness-type double patenting rejection over the '916 application.

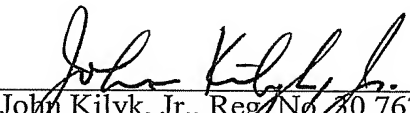
The '220 application and the present application have the same filing date (i.e., March 17, 2004). However, the '220 application has yet to be examined. Thus, the present application should be passed to issuance without the need to address the obviousness-type double patenting rejection in view of the '220 application.

If appropriate, an obviousness-type double patenting rejection may be raised in the prosecution of the '916 application and/or the '220 application. In such an event, Applicants will address the obviousness-type double patenting rejection at that time in connection with the prosecution of the '916 application and/or the '220 application.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

Respectfully submitted,



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